

REMARKS

In an Office Action dated December 28, 2004, the Examiner states that Applicants' response of October 12, 2004 is not fully responsive because it lacks a supplemental 1.132 declaration showing evidence of commercial success. In reply to this Action, Applicant provides herewith the required "Supplemental Declaration Under 37 CFR 1.132".

The previously submitted Declaration was determined by the Examiner to be insufficient to overcome the outstanding rejections because Applicants' allegedly failed to establish a nexus between the claimed invention and the evidence of commercial success. See, Office Action, page 10, 09 April 2004.

In the present Supplemental Declaration, a clear nexus is established between the claimed invention and evidence of commercial success thereof. In the Supplemental Declaration, two earplugs are described and compared: EARSoft Yellow Neon Blast earplugs and EARSoft Yellow Neon earplugs. Both earplugs are described as being identical in all respects except that the former includes the claimed invention. That is, the EARSoft Yellow Neon Blast earplugs include a pattern thereon which the Declaration describes as being formed by providing an earplug, orienting the earplug relative to a printing device, or vice versa, and printing the pattern on the earplug using the printing device, as recited in the claims of the present patent application and as described in the specification thereof. Moreover, the Supplemental Declaration continues by demonstrating that this feature of the claimed invention has resulted in substantial commercial success of the EARSoft Yellow Neon Blast earplugs over the Yellow Neon Blast earplugs.

Because the EARSoft Yellow Neon Blast earplugs possess the claimed invention, and because the EARSoft Yellow Neon earplugs are similar in all respects to the Blast earplugs but for the claimed invention, and because the Blast earplugs have experienced significant commercial success over the EARSoft Yellow Neon earplugs, it is clear that a nexus exists between the claimed invention and the evidence of commercial success set forth in the Supplemental Declaration.

This Supplemental Declaration, taken in combination with Applicants' previously submitted arguments for patentability (see Applicants' response of October 12, 2004), overcome the outstanding obviousness rejections issued under 35 USC §103(a); reconsideration and withdrawal thereof are respectfully requested.

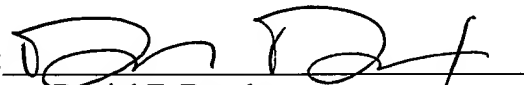
The Examiner is invited to contact Applicants' attorneys at the below-listed telephone number regarding this Reply or otherwise concerning the present application.

Applicants herein petition for any necessary extension of time required for entry and consideration of the present Reply.

The Commissioner is herein authorized to charge any required or outstanding fees regarding this Supplemental Response or otherwise concerning the present application to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,

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